

ALFRED HITCHCOCK'S mystery magazine

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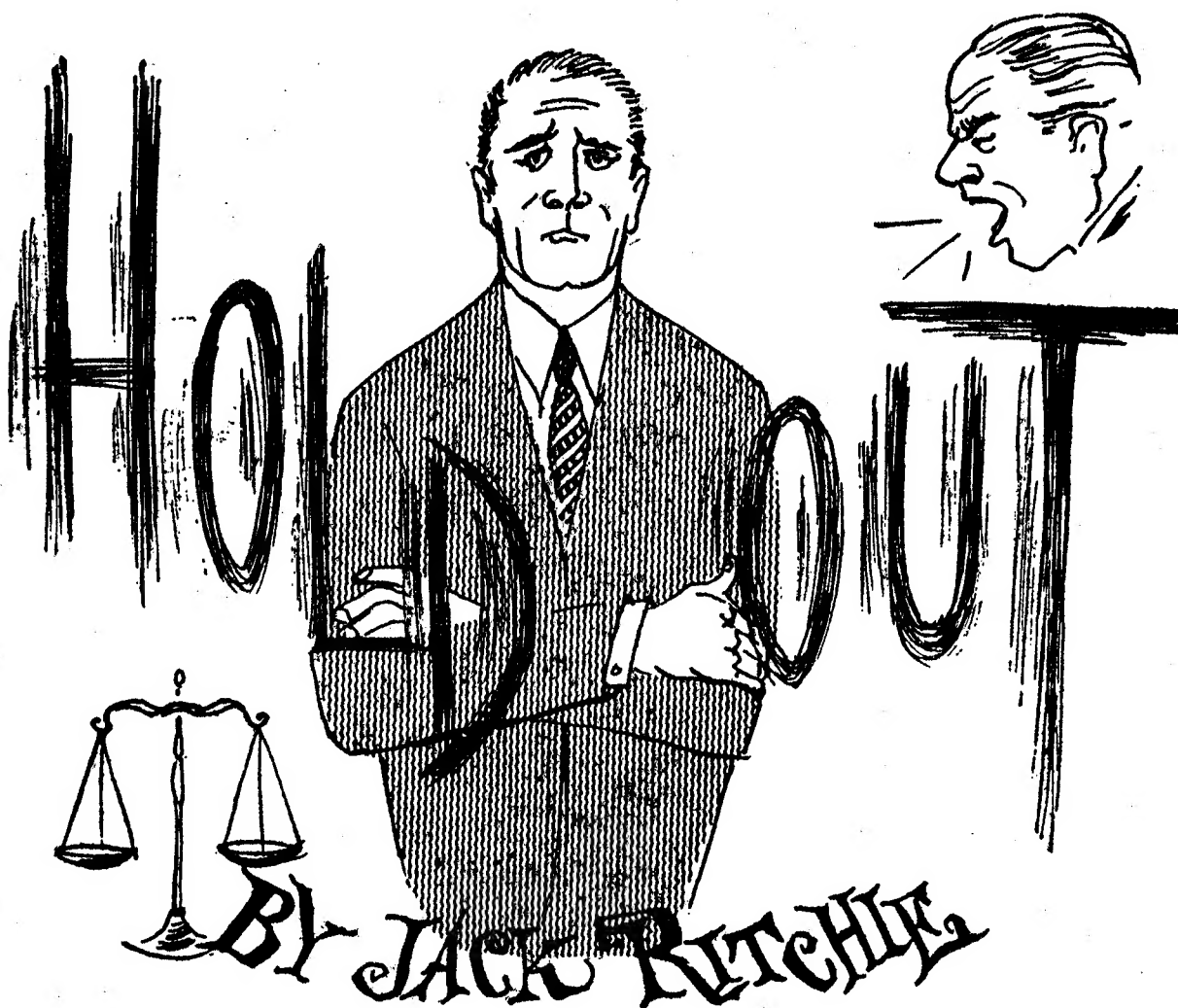
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BY JACK RITCHIE

NOT GUILTY," Henry Watson said stubbornly.

Stanley Vetter continued polling the jury. "Rothwell?"

"Guilty."

"Jenkins?"

"Guilty."

"Coleman?"

"Guilty," I said.

And then the eleven of us glared at Watson.

"Once again," Vetter said. "And on the twenty-sixth ballot, I might

add, we stand eleven for conviction, one for acquittal."

I took a strained breath. "I think we are dealing with an idiot."

Watson got to his feet. "Now see here. . . ."

Vetter quickly raised a hand. "Now, now, Watson, I'm sure Coleman didn't mean that."

"Of course I meant it," I said stiffly. "Never in my experience have I encountered such an ob-

When one juror holds out against his fellow jurors, it may be a matter of conscientious conviction, or it may be for another reason entirely. I find this an interesting subject for speculation.



stinate, stupidly . . . stubborn man."

Vetter lowered his voice and spoke in my ear. "We won't get anywhere by antagonizing him."

"We've tried being sweetly reasonable," I muttered. "And that hasn't done any good. We have attempted to appeal to his intelligence, but obviously that was futile from the start."

Vetter was a large man moulded for an easy chair. "Let's take this easy and not lose our tempers."

I glowered at Watson. "Do you *actually* believe that Duke O'Brien is innocent?"

He shifted uncomfortably. "Oh, I *think* he's guilty, all right. But you don't seem to understand my viewpoint. In my opinion, the state just hasn't *proved* that he murdered Matt Tyson."

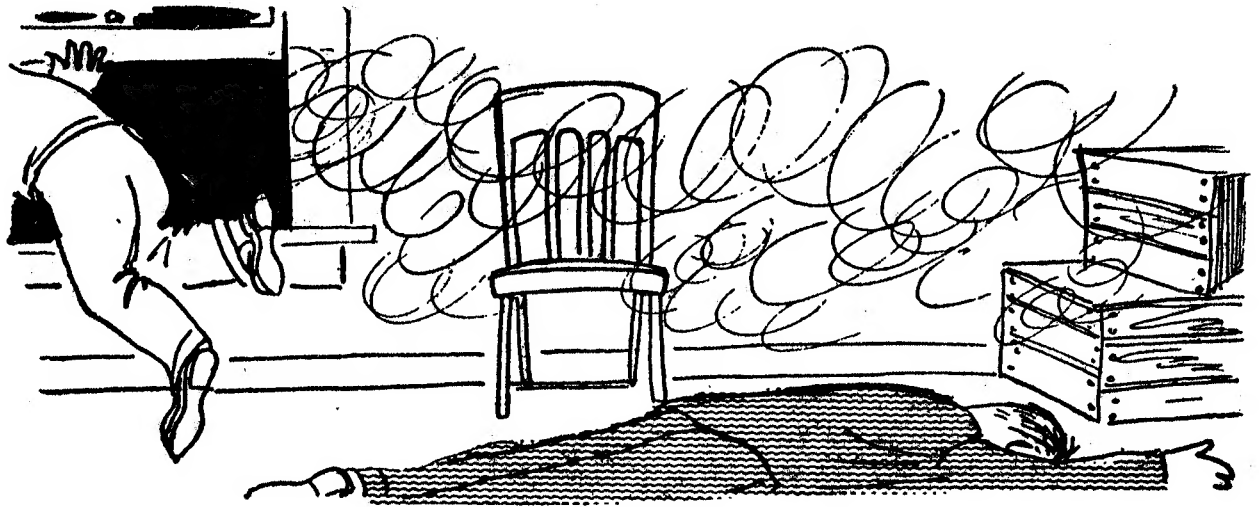
"Maybe so, son," Vetter said. "But if that's your opinion, you're lonelier than a chaplain in the Russian army."

I spoke with acid patience. "Duke O'Brien and Tyson were the only ones in that room. It was the rear room of a tobacco store. An off-duty policeman happened

to be in the shop purchasing a pipe when he heard the shot. He rushed to the back of the store and when he opened the door, he noted the following: Matt Tyson thoroughly dead on the floor, the smell of gunsmoke in the air, and Duke O'Brien in the process of exiting via the window. He pursued O'Brien through several alleys and fired a number of warning shots. It was either because of that . . . or because O'Brien ran out of wind . . . that the chase finally ended with O'Brien's surrender to the officer."

"But the police never found the murder weapon," Watson said obstinately.

Rothwell, a thin druggist who looked as though he had been born with a headache, took over the attack. "O'Brien was chased for blocks—through back yards and over fences. It was night, and during the chase he tossed the gun away. The police didn't search the area until morning." Rothwell appeared disgusted by that negligence. "What was the first thing O'Brien did when he was taken to



the police station? He demanded to see his lawyer and the police allowed him to. And I'll tell you what O'Brien told his lawyer. He told him where he'd tossed the gun and the lawyer got one of Duke's boys to pick it up that night."

"But Duke claimed that he didn't have a gun."

"He was wearing a shoulder holster. An empty shoulder holster. Would he be wearing that if he hadn't been carrying a gun?"

"But Duke said that he *usually* carried a gun—he just forgot to take it along that night."

Rothwell closed his eyes for a moment. "The police found traces of gunpowder on O'Brien's right hand."

"I know," Watson admitted. "But O'Brien said that he'd been target shooting a couple of hours earlier. That's how it got on his hand."

Rothwell looked as though he

wanted to cry; and he bit his lips.

There was a knock at the door and the court attendant's head and shoulders appeared. "The judge wants to know if you've reached a verdict yet."

I scowled. "Would we still be here if we had?"

He backed out. "You don't have to bite my head off. The judge just told me to ask."

Miss Jenkins, a determined school teacher, spoke to Watson as though he were in her third grade. "You do know that Duke O'Brien is a bad man, don't you?"

"Well . . . yes."

"He is a racketeer, isn't he?"

"I suppose so, but. . ."

"He controls the underworld of this city, doesn't he? Whether it's narcotics, or gambling, or. . ."

She blushed slightly. "Or other things. He has control of them all?"

"Yes," Watson said desperately. "But he isn't being tried for *those*

things. He's being tried for murder."

"Mr. Watson," Miss Jenkins said sternly. "You are a stubborn, stubborn man."

Watson appealed to us. "If Duke O'Brien is such a big operator . . . if he's got an *organization* . . . with killers and all that . . . why should he shoot Tyson himself? He could have had somebody else do the job for him and he could have been miles away with an alibi."

"It was a spur of the moment thing," Rothwell said. "That tobacco store is just a cover-up for a bookie joint or something like that and he and Tyson got into some kind of an argument. O'Brien lost his head and shot Tyson. Did you expect witnesses?"

"No, but. . ."

"Mr. Watson, do you know what *circumstantial* evidence is?"

"Yes, but I still think that the state hasn't . . ."

I took over. "Let us for the moment assume that you are a man of intelligence. Why did O'Brien run, if he was innocent?"

"He got panicky."

"What was his feeble story of what he claims happened?"

Watson rubbed his neck. "O'Brien said that he and Tyson were just talking when a shot came through the open window."

I smiled tightly. "An open window? It was 38 degrees outside. Why would anybody want to keep a window open in that kind of weather?"

"O'Brien said the room was smoky."

"The prosecution established the fact that neither O'Brien nor Tyson smoke."

"O'Brien said the room was smoky when he and Tyson went in."

"O'Brien said, O'Brien said," Rothwell snapped bitterly. "You believe everything O'Brien says. Why?" He leaned forward. "Do *you* intend to buy a *new* automobile if this is a hung jury, too?"

Watson's face went white. "See here, I won't be talked to that way. I demand an apology."

Vetter, the peacemaker, held up a hand. "I think we're all pretty tired and we're all hungry. What do you say we take a break?"

We sent out for sandwiches and coffee.

Vetter, Rothwell, and I grouped around our coffee cups at one end of the long table.

Rothwell ate without enthusiasm. "Suppose this ends like the first trial?"

Vetter sighed. "Let's hope not."

Rothwell glowered at Watson eating alone. "*He* won't be stupid enough to buy a car. He'll keep the

money hidden away until it's safe to spend it."

"Let's not jump to conclusions," Vetter said. "He might honestly believe that O'Brien hasn't been proved guilty."

This was the second time Duke O'Brien had been tried for the murder of Matt Tyson. The first trial had ended with a hung jury. Eleven for conviction, one for acquittal.

Three days after the jury had been dismissed, the juror holding out for acquittal had purchased a new automobile. It was something his neighbors noticed and it was something that did not escape the attention of the authorities either. It was also discovered that he had deposited five thousand dollars to his bank account a day previously.

The juror was under indictment now, and though he would admit to nothing, it was obvious that Duke O'Brien had managed to reach him with a bribe.

We waited until the courtroom attendant cleared the cups and saucers and then resumed our seats around the table.

Vetter spoke. "Mr. Watson, justice works in peculiar ways."

"It does?"

Vetter nodded. "You've read about racketeers going to prison, haven't you?"

"Of course."

"And you have noticed that it is very seldom that they are sent to prison because they have been tried for *racketeering*. They are usually put away because of something else—evasion of income taxes is common."

"Yes."

"And they are given unusually stiff sentences, aren't they? Ten years? Fifteen?"

Watson waited for the point.

Vetter smiled. "In the case of ordinary tax evaders, there is usually considerable leniency. A fine, perhaps, a suspended sentence, or occasionally a very short term in prison. But in the case of a racketeer, he is given the *maximum* sentence, the *maximum* fine."

Watson nodded.

"Then don't you see? The judge is not actually sentencing him for the evasion of income taxes, he is in effect sentencing him for *all* the crimes he knows he has committed—but which the authorities have been unable to prove he committed."

Watson sighed. "I know what you mean, however. . . ."

"Even if you don't think that O'Brien has been proved guilty of this particular crime, you certainly must know that he *is* guilty of many others. You would be finding him guilty of the *entire* life of crime he has lived."

"Yes," Watson agreed reluctantly. "But a prison sentence is one thing, and a . . . I mean that if we find him guilty, a death sentence is *mandatory* in this state."

Rothwell half-rose. "Is *that* why you won't find O'Brien guilty? Because he'll go to the chair?"

Watson avoided his eyes.

Rothwell's voice rose. "*Before* you were selected for this jury, you were *asked* if you had any objections to capital punishment. And evidently you didn't, or you wouldn't be in this room."

Watson colored. "Well, I didn't . . . dont. But . . . this Tyson wasn't exactly one of our better citizens . . . and O'Brien was almost doing the world a favor. . . ." He swallowed. "Don't you think that the death penalty is a little severe in this case?"

There was silence and then Vetter said, "Son, do you want a murderer walking around free in this world?"

"No. Of course not." He took a deep breath. "But suppose that we have a hung jury now. That doesn't mean that O'Brien will go free. The state will just try him again, and he'll be found guilty the next time."

Miss Jenkins was shocked. "Mr. Watson, do you *realize* what you're saying? You actually think that O'Brien is guilty, but you want

somebody *else* to do the . . . dirty work."

Vetter shook his head sadly. "So you think the state will try O'Brien again?"

Watson put a finger in his collar. "Why, of course."

Vetter smiled sadly. "It's possible, but I wouldn't bet on it. In theory, the state can keep trying O'Brien indefinitely, until there's a verdict, one way or the other. But when there are *two* hung juries, the prosecutor's office begins to wonder. Does it really have enough of a case to convince a jury? Is it worthwhile going through all the trouble, the time, the expense just to try O'Brien again and maybe get *another* hung jury? Or even an acquittal? Or maybe the prosecutor just gets disgusted and says, 'If I can't find twelve jurors with the honesty and the *guts* to put O'Brien where he belongs, then the hell with it. We'll turn him loose. He's exactly what the citizens deserve. They've brought this on themselves.'"

Watson looked uncomfortable.

"There are other things that could happen," Vetter said. "Maybe the policeman who caught O'Brien will suddenly 'forget' what he saw. He's probably got mortgage payments like everybody else and if he thinks that O'Brien can keep buying his way out of the electric chair,

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he might decide that it's smart to get in on some of the money."

"Look, Watson," Rothwell said. "You wouldn't be sending O'Brien to the chair for just this one killing. Maybe he doesn't deserve the chair for getting rid of Tyson, but does he deserve to go *free*?"

"Son," Vetter said. "Do you think that this is the only time O'Brien's been responsible for somebody dying? Every time you read about somebody being found dead in the trunk of his own car, you know doggone well who was behind it."

"Anyway you look at it," I said vehemently, "O'Brien deserves to sizzle in the chair."

Watson winced.

"Mr. Watson," Miss Jenkins said quietly. "Do you have children?"

Watson nodded. "Two. The boy is fourteen. The girl seventeen."

"Do you think they'd be proud of you if you let O'Brien go free? If you shirked your duty?"

Watson said nothing.

Miss Jenkins went on. "You are aware of the narcotics traffic in this city, are you not? And how many *high school* students have been lured into addiction by O'Brien and his kind?"

There was a long silence and then Watson looked up. He sighed. "You're right. All of you. I was being a . . . a coward."

Vetter beamed. "Let's make it formal. I'll call the roll."

When his turn came, Watson stood up. "Guilty," he said firmly.

Vetter nodded approvingly and continued. "Rothwell?"

"Guilty."

"Jenkins?"

"Guilty."

"Coleman?"

"Not guilty," I said.

They stared at me.

I stood up. "It has suddenly struck me that we are violating one of the most elementary principles of justice. We are convicting O'Brien for what we *think* he is, rather than on the charge which brought him into court."

But that, of course, was not my actual reason for changing my vote.

As long as Watson had held out, everything had been satisfactory. I would have preferred that *he* appear responsible for the hung jury and I had continually antagonized and insulted him in the hope of bolstering his stubbornness.

But now Watson had changed his mind.

I regarded the eleven surprised jurors and realized that now I would have to begin working for my money.

I'd have to make it convincing.

After all, Duke O'Brien had given me ten thousand dollars to make sure there would be a hung jury.